

## The Rulemaking Process

The rulemaking process is the same for PPQ and VS. It has as a prominent feature a procedure for eliciting public comment that demonstrates how the United States adheres to the SPS Principle of transparency.

Remember that the SPS Principle of Transparency is that each member country will demonstrate openness of their domestic rulemaking process which affects trade by:

- publishing its requirements
- providing advanced notification of any changes in SPS requirements that may affect trade
- make available the scientific basis for the proposed action
- allow countries an opportunity to comment on the proposed action

If the determination in the rulemaking process is to propose that entry for the commodity be allowed, prior to issuing a rule that amends the list of enterable commodities, there is a public notice and comment process. This process is required by the Administrative Procedure Act and usually lasts 60 days. This Act stipulates that the public receive notice with information about a proposed change in regulations or procedures so that people have a chance to comment and with information about the time at which the rule is slated to go into effect. The proposal is published in the Federal Register, published every business day. It explains the proposed rule and invites comments within a given time period.

Proposed rules can be and frequently are changed during this comment process prior to becoming a final rule. The process often takes time, at least a year or two, because the rule needs to be reviewed outside of USDA by the Office of Management and Budget. The final rule is then published in the Federal Register along with the comments made during the public notice process. Eventually the rule is published in the Code of Federal Regulations, published once a year. In recent years information has become much more easily and quickly obtainable through the Internet. The Federal Register and the Code of Federal Regulations are both published on the Internet. At this point a commodity becomes enterable.

An important principle during this review process is that all input is on the record. There can be no closed-door sessions or “ex parte” communication during this process in the interest of fairness and of transparency. Any attempt to influence the comment period outside of the open input process may backfire. The basis for most lawsuits challenges the science (PRA). If there has been an attempt to influence rulemaking outside of the open comment process it may become the basis for a lawsuit, which can delay the entire process for years or it may kill the proposed rule altogether.

*This is the printable PDF of the rulemaking process. To return to module 2, simply close or minimize the browser window with the Rulemaking module.*